IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

FRIDAY, THE 8TH JUNE 2007 / 18TH JYAISHTA 1929

OP.No. 27641 of 2000(N)

PETITIONER:

DR. V.F. PHILOMINA,
REGIONAL DEPUTY DIRECTOR (NC),
ESI DISPENSARY,
UDYOGAMANDAL.

BY ADV. SRI.S.RADHAKRISHNAN,
SMT.JEAN VINITHA PETER.

RESPONDENTS:
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1. **THE SECRETARY,**
LABOUR DEPARTMENT,
MINISTRY OF KERALA,
THIRUVANANTHAPURAM.

2. **STATE OF KERALA,**
REPRESENTED BY THE SECRETARY GOVERNMENT,
LABOUR AND REHABILITATION (F) DEPARTMENT,
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SMT. REMANI.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 08/06/2007, ALONG WITH O.P NOS. 34824/2000 & 1669/2001, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO. 46438/2000 IN O.P. NO. 27641/2000

DISMISSED

08/06/2007. **SD/- THOTTATHIL B. RADHAKRISHNAN, JUDGE.**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE ORDER NO. E1-8519/87/DIMS DTD. 04/05/1989.

EXT.P.2: COPY OF THE ORDER G.O. (MS) 882/96/(115)/FIN. DTD. 07/11/96.

EXT.P.3: COPY OF THE ORDER G.O. (RT). NO. 3388/98 LBR DTD. 30/10/98.

EXT.P.4: COPY OF THE ORDER NO. G.O. (RT). NO. 484/99 LBR DTD. 23/02/99.

EXT.P.5: COPY OF THE ORDER NO. 21616/F1/99/LBR DTD. 20/01/2000.

EXT.P.6: COPY OF THE REPRESENTATION DTD. 18/02/2000.

EXT.P.7: COPY OF THE G.O. (RT). 2407/2000/LBR DTD. 04/07/2000.

//TRUE COPY//

prv.

THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.Nos.27641/2000-N, 34824/2000-U

& 1669/2001-W

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Dated this the 8th day of June, 2007.

JUDGMENT

The petitioners in these writ petitions were Assistant Insurance Medical Officers. All of them were promoted as Grade-II Insurance Medical Officers with effect from 16-9-1985. This means, all of them were entitled to the second higher grade in that category on completion of 10 years of service as Grade -II Insurance Medical Officers. That entitlement in terms of the orders issued by the Government on the basis of Pay Commission Recommendations accrued to them on 16-9-1995. Thereafter, by G.O.Ms.No.882/96/(115)/Fin. dated 7-11-1996, the post of Insurance Medical Officer Grade-II was abolished by the Government with effect from 1-1-1995. On the strength of that Government Order, it appears that the official respondents took the stand that the petitioners had not completed 10 years as Grade-II Insurance Medical Officers, following their promotion

on 16-9-1985 to that category and therefore, are not entitled to a higher grade as stated above. It is also a matter of record that even after G.O.Ms.No.882 was issued, at least, one among the petitioners was granted higher grade.

2. The entire disputes between the parties, ultimately, turn around the date on which the abolition of the category of Insurance Medical Officers Grade-II comes into effect, in terms of law because, if the petitioners had completed 10 years as Insurance Medical Officers Grade-II prior to such date, they would, obviously, get the benefit of a higher grade.

3. G.O.Ms.No.882 is only an executive order. The entitlement of each among the petitioners to a higher grade on completion of 10 years' service as Insurance Medical Officer Grade-II is a right, though it accrued to them by virtue of the conditions of service which conferred on them on such entitlement on the completion of 10 years of service as Grade-II Insurance Medical Officers. That vested right cannot be taken away by an executive order, that too, by making the executive order to be effective retrospectively. Even without considering

the question whether that right of the petitioners is a vested right or not, the case in hand can be easily solved because the executive order, G.O.Ms.No.882 issued on 7-11-1996 can be effective only from that and cannot be made effective with a retrospective date, as has been done as per G.O.Ms.No.882. This is because, the executive orders cannot be made with retrospective effect. If at all, any support is required for this proposition, I would immediately refer to the decision of this Court in **Uthaman's case, 2001 (1) KLT 723** which is one among the plethora of decisions regarding the law applicable in that regard. In this view of the matter, it is declared that G.O.Ms.No.882 dated 7-11-1996 abolishing the post of Insurance Medical Officers Grade-II would come into effect only on 7-11-1996. This means that each among the petitioners had completed 10 years of service as Insurance Medical Officers Grade-II before the abolition of the said post, as per G.O.Ms.No.882. It is further declared that each of the petitioners was entitled to a higher grade in the category of Insurance Medical Officers Grade-II on completion of 10 years of service into that category, i.e., on completion of 10 years from 16-9-1985.

4. All the petitioners have retired from service. It is stated that no retiral benefits have been granted to the petitioner in O.P.27641/2000 on account of the pendency of these writ petitions. In such circumstances, it is directed that on the basis of the declarations contained in this judgment, the outstanding emoluments and retiral benefits due to the petitioners shall be worked out and released to them within two months from the date of receipt of a copy of this judgment. All executive orders produced in these writ petitions contrary to the declaration granted above, stand quashed to that extent.

These writ petitions are disposed of as above.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

Sha/-

THOTTATHIL B. RADHAKRISHNAN, J.

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O.Ps.27641/2000-N, 34824/2000-U

& 1669/2001-W

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JUDGMENT

Dated: 8th June, 2007.